

March 21, 2012

Marlene H. Dortch, Secretary Federal Communications Commission 445 Twelfth Street, S.W. Washington, DC 20554

Re:

Applications of Cellco Partnership d/b/a/ Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless, LLC for Consent to Assign Wireless Licenses WT Docket No. 12-4; Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees, MB Docket No. 10-56

Dear Ms. Dortch:

The Applicants in this proceeding have submitted for the record several Commercial Agreements that, among other things, "provide the parties to those agreements with the ability to act as agents selling one another's services." In doing so, however, they took it upon themselves to redact significant portions of those documents, and have made clear that they would not submit unredacted copies of those documents unless ordered to do so by the Commission. While the Commission recently directed the Applicants to make a revised submission of the Commercial Agreements in which specific sections are no longer redacted, Public Knowledge believes that the Commission should require full disclosure of all provisions of the Commercial Agreements.

In this regard, it is interesting to note the very different view of redacting taken by one of the Applicants – Comcast Corporation – when disclosure of someone else's confidential information is at issue. In order to protect the interests of online video distributors ("OVDs") in the aftermath of Comcast's acquisition of NBC/Universal, the Commission imposed a condition under which Comcast/NBCU must provide an OVD comparable programming on terms that are economically equivalent with those the OVD has been able to negotiate with a qualifying peer programmer. A Recently, Comcast filed a request that OVDs be compelled to "provide a full and unredacted copy of their peer deal(s)" whenever they seek to take advantage of this merger condition. S In addition, Comcast proposed a new protective order under which disclosure of

¹ Letter from J.G. Harrington to Marlene H. Dortch, at 2 (Jan. 18, 2012); Letter from Michael H. Hammer to Marlene H. Dortch, at 2 (Jan. 18, 2012). Unless otherwise indicated, all materials cited in this letter were filed in WT Docket No. 12-4.

² Cellco Partnership d/b/a/ Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless, LLC, Joint Opposition to Petitions to Deny and Comments at 70-79 (Mar. 2, 2012).

³ See, e.g., Letter from Rick Kaplan, Chief, Wireless Telecommunications Bureau, to Lynn Charatan, Vice President, Comcast Corp. (Mar. 8, 2012).

⁴ See Comcast Corp., General Electric Co. and NBC Universal, Inc., Memorandum Opinion and Order, 26 FCC Rcd. 4238, App. A, § IV.A.2.b (2011).

⁵ Letter from David P. Murray to William T. Lake, MB Docket No. 10-56, at 3 (Feb. 17, 2012).



confidential materials would not be limited to outside counsel and experts only (as it is under the protective orders in this proceeding), but would also include disclosure to "business persons with executive management and negotiating responsibilities" within Comcast/NBCU.6

As Comcast has recognized, program carriage agreements "have long been considered (and acknowledged by the Commission) as the 'crown jewels' of the business." Nonetheless, Comcast proposes that OVDs be required to hand over such agreements, in full and unredacted form, for review by executives of their biggest competitor. The material redacted from the Commercial Agreements in this proceeding can be no more confidential than the "crown jewels" of the industry. Yet Comcast feels entitled to redact such information even though it would only be disclosed to outside counsel and experts, not the internal decisionmakers of other companies. For Comcast, the sensitivity of information and the right to redact apparently are determined by a single criterion: what rule best serves Comcast's interests in a particular situation. Comcast is free to take such a self-serving approach, but the Commission is not.

As it weighs the need for further disclosure of redacted materials, the Commission should take note of Comcast's radically different approach when it is on the other side of the disclosure issue.

Respectfully submitted,

/s/John Bergmayer Senior Staff Attorney PUBLIC KNOWLEDGE

cc:

Jim Bird Sandra Danner Bill Dever Lisa Gelb Rick Kaplan Paul LaFontaine Virginia Metallo Paul Murray Joel Rabinovitz

Eric Ralph Jennifer Salhus Austin Schlick Susan Singer Christopher Sova Tim Stelzig Joel Taubenblatt Sara Whitesell Aleks Yankelevich

⁶ *Id.* at 4.

⁷ Comments of Comcast Corporation, MB Docket No. 11-131, at 34 (Nov. 28, 2011).